

KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS

James H. Mutchnik, P.C.
To Call Writer Directly:
+1 312 862 2350
james.mutchnik@kirkland.com

300 North LaSalle
Chicago, IL 60654
United States
+1 312 862 2000
www.kirkland.com

Facsimile:
+1 312 862 2200

May 25, 2020

By ECF

Honorable Alison J. Nathan
United States District Court
Southern District of New York
40 Foley Square, Room 2102
New York, NY 10007

Re: *In re Application of Benjamin Steinmetz for an Order to Take Discovery from Vale S.A., Vale Americas, Inc., Rio Tinto PLC, and Rio Tinto Limited Pursuant to 28 U.S.C. § 1782, No. 20 Misc. 212 (AJN).*

Dear Judge Nathan:

We write on behalf of Respondents Rio Tinto PLC and Rio Tinto Limited (collectively “Rio Tinto”), two of the parties from which discovery is sought in Benjamin Steinmetz’s application for an order allowing for discovery under 28 U.S.C. § 1782. We respectfully write, pursuant to your Individual Rule 1(C), to request a telephonic conference in this matter to set a briefing schedule on the motion for discovery under Section 1782.

By way of background, Mr. Steinmetz commenced this action for the purported reason of seeking discovery in aid of litigation currently pending in England between him and Respondent Vale S.A. related to the loss of mining tenements in Guinea in connection with a joint venture agreement between Vale and Mr. Steinmetz. The discovery Mr. Steinmetz seeks is overbroad, largely unrelated to the litigation in England, and appears primarily to be an attempt to create a distraction.

Rio Tinto anticipates opposing discovery both on the mandatory requirements of Section 1782 and on the four discretionary *Intel* factors. Among other things, this Court lacks jurisdiction over the requested discovery, since Rio Tinto is neither incorporated nor headquartered here and the discovery arises from mines in Guinea and corporate decisions made principally in the United Kingdom. *See In re del Valle Ruiz*, 939 F.3d 520, 530 (2d Cir. 2019).

Similarly, the discretionary factors weigh against Mr. Steinmetz. Vale is a participant in the foreign proceedings, Rio Tinto is headquartered in England and thus subject to the jurisdiction

KIRKLAND & ELLIS LLP

Honorable Alison J. Nathan, U.S.D.J.
May 25, 2020
Page 2

of the court before which the foreign proceedings are pending, and, based on quotes Mr. Steinmetz has given to the press about this application, this proceeding appears to be intended as a means to publicize documents through a public court docket in the United States rather than as a real effort to obtain discovery.¹ Further, the broad discovery Mr. Steinmetz seeks substantially exceeds the scope of the litigation in England, suggesting that his motives in obtaining this information may be other than using them against Vale in the English proceeding—a concern heightened by Mr. Steinmetz’s comments in the press coverage surrounding this application stating that this application was part of an effort to get an arbitral tribunal to reopen an award it issued against his company.² See, e.g., *Nat'l Broad. Co. v. Bear Stearns & Co.*, 165 F.3d 184, 191 (2d Cir. 1999) (holding that Section 1782 discovery cannot be used in aid of private arbitration proceedings); *In re Postalis*, No. 18 Misc. 497 (JGK), 2018 WL 6725406, at *5 (S.D.N.Y. Dec. 20, 2018) (denying Section 1782 application based on press statement inconsistent with stated purpose of application).

For these reasons and more, Rio Tinto will oppose discovery under Section 1782. Rio Tinto respectfully requests 30 days to file its opposition. Rio Tinto has contacted counsel for Vale and Mr. Steinmetz; Vale consents to this motion and Mr. Steinmetz has not yet responded to Rio Tinto’s inquiries regarding his position.

**

For the foregoing reasons, Rio Tinto respectfully requests that the court schedule a telephonic conference in this matter regarding an appropriate briefing schedule on Mr. Steinmetz’s application.

Respectfully submitted,



James H. Mutchnik, P.C.
(*pro hac vice* to be filed)

cc: All Counsel of Record (via ECF)

¹ See Neil Hume, *Beny Steinmetz seeks to reverse \$2bn arbitration award to Vale*, Financial Times, May 24, 2020, www.ft.com/content/83369732-9308-4010-bf1f-b0c0dcc2139d.

² *Id.*